



Request for Proposals—November 30, 2015

SUPPLEMENTATION OF THE EVIDENTIARY RECORD AND WORKLOAD MANAGEMENT AT THE BOARD OF VETERANS' APPEALS

The Administrative Conference is seeking proposals by potential consultants to undertake a research project that will study supplementation of the evidentiary record and workload management of VLJ hearing cases at the Board of Veterans' Appeals (Board).

Proposals are due by 5:00 p.m. Eastern Time on November 30, 2015.

Background.

“The Department of Veterans Affairs (VA) administers the federal program that provides benefits to veterans with service-connected disabilities.” *Henderson v. Shinseki*, 562 U.S. 428, 431 (2011). In order to receive benefits, a veteran must first file a claim with a local VA office, which makes a decision to grant or deny the claim. A veteran that is dissatisfied with the decision may appeal the decision to the Board for de novo review.

Under the law, a veteran may supplement the record on appeal with additional argument and evidence before, during, or after an optional hearing before the Board. *See* 38 C.F.R. §§ 3.156, 20.1304, 20.800; *see also* *Bryant v. Shinseki*, 23 Vet. App. 488 (2010). When additional argument and/or evidence is submitted to the Board, the Board must often remand the case to the office that originally decided the claim for re-adjudication before the matter can be returned to the Board for further consideration. Leaving the record open for supplementation throughout the appeal process, as well as after the hearing has been held, can lead to multiple hearings at the local office and Board levels, contributing to delays in issuing final decisions to veterans.

In addition, the Board must offer a veteran the opportunity for an optional hearing before a Veterans Law Judge (VLJ). If a hearing is held, the VLJ who conducted the hearing must, by statute, participate in making the final determination of the appeal. *See* 38 U.S.C. § 7107(c); *see also* *Arneson v. Shinseki*, 24 Vet. App. 379, 387 (2011); 38 C.F.R. § 20.707. Due to the high volume of appeals in the system, requiring cases to remain with a specific VLJ through the final determination stage presents a challenge to workload management of VLJ hearing cases.

Project Description.

The Conference seeks proposals for an independent study that will objectively analyze whether changes should be made to the above-noted rule governing supplementation of the record and to 38 U.S.C. § 7107(c), in each case with the object of improving the overall fairness, efficiency, and Veteran satisfaction with the VA appeals processes; and, if so, what particular reforms should be undertaken. Appropriate consideration should be given to what the Supreme Court has described as the adjudicative system's special “solicitude for the claimant.” *Walters v. Nat'l Ass'n of Radiation Survivors*, 473 U.S. 305, 311 (1985).



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In addressing these questions, the consultant should not only analyze relevant legal authorities and academic literature but also use empirical methods to analyze VA-supplied data, conduct interviews of agency officials, survey stakeholders, and review relevant policies and procedures of other analogous tribunals. The Conference's staff will assist the consultant in gathering relevant data, which may be subject to access and use restrictions, and in setting up interviews and designing surveys.

Given the breadth of the potential project, project submissions should offer concrete substantive proposals to address these topics and frame the scope of work.

How to Submit a Proposal.

Proposals are invited from qualified persons who would like to serve as a research consultant on this project. Joint proposals from multiple individuals will also be considered. All responses will be considered by the Office of the Chairman.

The consultant's study should result in a report that is delivered first for review by the Office of the Chairman and then forwarded to the Board for consideration as a report from the Office of the Chairman. The consultant will work with the Office of the Chairman and the Board to refine and further shape the report as necessary.

The report may also be forwarded to a committee of the Conference membership for consideration. The consultant would then work with the Office of the Chairman and the committee as the committee debates and considers its own recommendations based on the research report. These recommendations may be directed to the Board, other administrative agencies, and/or Congress. The committee's recommendation, if any, would then be forwarded to the Council of the Conference and ultimately to the full Conference membership meeting in plenary session. If approved at the plenary session, the recommendation will become an official recommendation of the Administrative Conference. (For a general understanding of how the Conference is organized and operates, see 5 U.S.C. §§ 591-596 and <http://www.acus.gov>.)

The Conference will provide a consulting fee for this study, plus a budget for related research and travel expenses, if any. The Conference also typically encourages its consultants to publish the results of their studies in journals or other publications. Thus, working as a Conference consultant provides some compensation, a publication opportunity, and the opportunity to work with Conference members from federal agencies, academia, the private sector, and public interest organizations to help shape and improve administrative law, procedure, and practice.

Those submitting proposals should understand that, in addition to the work involved in researching and writing the consultant's report, the consultant will (in most cases) need to work with the Office of the Chairman and committees as the Conference develops a recommendation based on the report. The consulting fee is not designed to match a consultant's normal consulting rates. It is a significant public service to serve as a consultant to the Conference.



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To submit a proposal to serve as the Conference's consultant on this project, you must:

- Send an e-mail to Attorney Advisor Amber Williams, at awilliams@acus.gov. Proposals must be submitted by e-mail.
- Include the phrase "ACUS Project Proposal" in the subject line of your e-mail.

In the body of your e-mail or in an attachment, please:

- State the name of the project for which you are submitting a proposal: "Supplementation of the Evidentiary Record and Workload Management at the Board of Veterans' Appeals."
- Explain why you would be well qualified to work on the project. Include your curriculum vitae or other summary of relevant experience.
- Explain your research methodology and how you would develop recommendations based on the research. There is no required format, and 2-4 pages should probably be sufficient.
- State how much funding you would need for the project, keeping in mind that the consulting fee should generally not exceed \$25,000. The amount of the consulting fee and expenses is not the primary factor in the award of the contract; the quality of both the proposal and the consultant's ability to carry out the study are the most important factors. There may be some flexibility in the budget based on factors relating to the proposal (e.g., the need for research assistance and empirical or interviewing work, the consultant's location relative to Washington, D.C., or whether the project is forwarded to a committee), so your proposal should suggest any special needs in this regard.
- Propose a schedule for the project deliverables. This project requires submission of a draft outline, a final outline, a draft report, and a final report. Multiple draft reports may be necessary based on input from the Office of the Chairman or Board; nonetheless, the draft report should be substantially complete. The timeline for deliverables should substantially adhere to the schedule below, but high quality research leading to a well-written report will be the prime consideration.

| Deliverable | Due Date |
|-----------------------|----------------------------------|
| Draft Project Outline | Contract Award + 30 Days |
| Final Project Outline | Draft Project Outline + 14 Days |
| Draft Report | Final Project Outline + 165 Days |
| Final Report | Draft Final Report + 21 Days |



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A July 2016 submission date for the draft report is preferred, so that a committee recommendation, if any, can be targeted for completion at a plenary session of the Conference held in December 2016.

Submit your proposal by 5:00 p.m. Eastern Time on November 30, 2015. Only proposals submitted by the stated deadline are guaranteed to receive consideration. Proposals may also be submitted or amended at any time until the award of the contract, and the Conference may consider any proposals or amended proposals received at any time before the award of the contract.

Proposals will be evaluated based on:

- The qualifications and experience of the researcher(s) and knowledge of literature in the field (if applicable);
- The quality and clarity of the proposal and the likelihood that the proposed research will contribute to greater understanding of the subject matter;
- The timeline of the proposal and the ability of the researcher(s) to perform the research in a timely manner; and
- The cost of the proposal (although the other factors are more important).

Failure to follow the above instructions may result in your proposal not being considered. Including the phrase “ACUS Project Proposal” in the subject line of your e-mail is important so that your proposal can be easily identified.